

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

NEIGHBORS LEGACY HOLDINGS, INC.,

Debtor

CASE NO. 18-33836-H1-11

Chapter 11

MARK SHAPIRO, TRUSTEE  
OF THE UNSECURED CREDITOR TRUST  
OF NEIGHBORS LEGACY HOLDINGS,  
INC. AND ITS DEBTOR AFFILIATES,  
Plaintiff

VS.

ADV. NO. 20-03016

TOM VO, ET AL.,  
Defendants

JURY DEMANDED

**ORIGINAL ANSWER OF DEFENDANT  
ELANIE UCBAMICHAEL MD**

TO THE HONORABLE MARVIN ISGUR UNITED STATES BANKRUPTCY JUDGE:

Comes now Elanie UcBamichael MD, one of the Defendants in the above numbered and titled Adversary Proceeding, and for answer to the Plaintiff's First Amended Complaint (doc 4, the "Complaint") filed by Mark Shapiro, Trustee of the Unsecured Creditor Trust of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates (the "Trustee"), Elanie UcBamichael MD respectfully represents:

**Response to Jurisdiction and Venue**

1. Elanie UcBamichael MD admits paragraphs 1 through 6 of the Complaint and agrees that this Court has jurisdiction and venue to consider the Complaint as to Elanie UcBamichael MD. Elanie UcBamichael MD consents to the entry of final orders or judgment by this

honorable Court pursuant to BLR 7008-1 and 7012-1. Elanie UcBamichael MD denies that the Court has venue to consider the Complaint as to Defendants UcBamichael Holdings, Ltd and UcBamichael Holdings Management, LLC. Elanie UcBamichael MD does not know whether the Court has jurisdiction or venue to consider the Complaint as to any other Defendants.

### **Response to Parties**

2. Elanie UcBamichael MD admits the allegation of paragraph 7 of the Complaint that the Plaintiff, Mark Shapiro, is the Trustee of the Unsecured Creditor Trust (the "Trust") of Neighbors Legacy Holdings, Inc., and its affiliates (the "Debtors").

3. Elanie UcBamichael MD denies the allegation of paragraph 58 of the Complaint that Elanie UcBamichael MD resides at 3195 Dowlen Rd, Suite 101, Beaumont, Texas 77706. That is a UPS mail box, not a residence. Elanie UcBamichael MD resides at 7745 Village Dr., Beaumont, Texas 77713.

4. Elanie UcBamichael MD denies the allegations of paragraphs 83 and 84 of the Complaint in part. Elanie UcBamichael MD admits that UcBamichal Holdings, Ltd is a Texas limited partnership, and that UcBamichael Holdings Management, LLC, its general partner, is a Texas limited liability, but denies that the addresses stated in the Complaint are correct. UcBamichal Holdings, Ltd and UcBamichal Holdings Management, LLC reside at 7745 Village Dr., Beaumont, Texas 77713.

5. Elanie UcBamichael MD does not have knowledge about and is not able to either admit or deny the allegations of paragraphs 8 through 57, 59 through 82, 85 and 86 of the Complaint. Elanie UcBamichael MD does not know the correct names and identity of the other defendants named in the Complaint.

### **Response to Background Facts**

6. Elanie UcBamichael MD does not have knowledge about and is not able to either admit or deny the allegations of paragraphs 87 through 91 of the Complaint concerning the bankruptcy cases of the Neighbors Debtor Entities, the Chapter 11 Plan, or the creation of the Unsecured Creditor Trust.

### **Neighbors Emergency Centers Alleged Transfers to Defendant**

7. Elanie UcBamichael MD denies the allegations of paragraphs 92 through 96 of the Complaint and demands strict proof thereof.

8. Elanie UcBamichael MD denies that Elanie UcBamichael MD ever made any loans to the Neighbor Debtor Entities (as that term is defined in the Complaint).

9. Elanie UcBamichael MD denies that Elanie UcBamichael MD was a creditor of any of the Neighbor Debtor Entities.

10. Elanie UcBamichael MD denies that it received any payment alleged in the Amended Complaint and Exhibit A to the Amended Complaint to have been made to Elanie UcBamichael MD.

11. Elanie UcBamichael MD did not receive any payments or transfers from any of the debtor entities except for only NEC Port Arthur Emergency Center, LP. Elanie UcBamichael MD denies that NEC Port Arthur Emergency Center, LP was insolvent on the dates of alleged transfers to Elanie UcBamichael MD.

### **Response to Claims and Causes of Action**

12. Elanie UcBamichael MD denies the allegations of paragraphs 97 through 105 of the Complaint as they concern Elanie UcBamichael MD, and demands strict proof thereof.

13. Elanie UcBamichael MD does not have knowledge about and is not able to either admit or deny the allegations of paragraphs 97 through 105 of the Complaint with respect to defendants other than Elanie UcBamichael MD.

**Facts Applicable to All of the Trustee's Theories**

14. Elanie UcBamichael, MD did not receive any payments or transfers from any of the debtor entities except for NEC Port Arthur Emergency Center, L.P.

15. NEC Port Arthur Emergency Center, L.P. was non insolvent on the dates of any of the alleged transfers. NEC Port Arthur Emergency, LP's Financial Statements prove that NEC Port Arthur Emergency, LP was solvent through October 31, 2017.

16. Elanie UcBamichael, MD invested \$75,000.00 to purchase a 3% limited partnership interest in NEC Port Arthur Emergency Center, L.P. The total of all payments received by Elanie UcBamichael, MD from NEC Port Arthur, LP is less than the amount which Elanie UcBamichael, MD paid to purchase its limited partnership interest. The amount invested is value and reasonably equivalent value for the payments received.

17. NEC Port Arthur Emergency Center, L.P. is a pass through entity for federal income taxes, and did not pay taxes on its income directly to the United States Treasury. The federal income tax liability of NEC Port Arthur Emergency Center, L.P. was passed through to the limited partners in proportion to each partners' share of ownership of the limited partnership, and reported on K-1 statements to the individual partners. The money paid by NEC Port Arthur Emergency Center, L.P. to its limited partners was for the purpose and in amounts to enable each partner to pay its share of the partnership's federal income tax liability. The amounts paid to Elanie UcBamichael, MD were for that purpose, and Elanie UcBamichael, MD paid its share of the federal income tax liability the partnership to the United States Treasury with Elanie

UcBamichael, MD's federal income tax returns. Payment by Elanie UcBamichael, MD of its share of the federal income tax liability of NEC Port Arthur Emergency Center, L.P. is value and reasonably equivalent value for the amounts received.

**Defenses to the Trustee's Claims for Alleged Receipt of Fraudulent Transfers  
Under Bankruptcy Code Sections 548 and 550.**

18. Elanie UcBamichael MD did not receive any payments or transfers from any of the debtor entities except for NEC Port Arthur Emergency Center, L.P.

19. NEC Port Arthur Emergency Center, L.P. did not make any payments or transfers to Elanie UcBamichael MD with actual intent to hinder, delay, or defraud any entity to which NEC Port Arthur Emergency Center, L.P. was indebted. Elanie UcBamichael MD is not liable to the Trustee under 11 U.S.C. Section 548(a)(1)(A).

20. On the dates of the alleged transfers, and at all relevant times, NEC Port Arthur Emergency Center, LP was not insolvent, and did not become insolvent as a result of any payments or transfers to Elanie UcBamichael MD. Elanie UcBamichael MD is not liable to the Trustee under 11 U.S.C. Section 548(a)(1)(B)(ii).

21. NEC Port Arthur Emergency Center, LP received reasonably equivalent value in exchange for any alleged transfer to Elanie UcBamichael MD. Elanie UcBamichael MD invested \$75,000.00 to purchase 3 percent limited partnership interest in NEC Port Arthur Emergency Center, LP, and the amount invested is greater than the amount of any and all payments and transfers from NEC Port Arthur Emergency Center, LP to Elanie UcBamichael MD. In addition, Elanie UcBamichael, MD paid its proportionate share of federal income taxes based upon income of NEC Port Arthur Emergency Center, L.P. Elanie UcBamichael MD is not liable to the Trustee under 11 U.S.C. Section 548(a)(1)(B)(i).

22. Elanie UcBamichael MD gave value to NEC Port Arthur Emergency Center, LP in good faith and without knowledge that any alleged transfer to Elanie UcBamichael MD was made by NEC Port Arthur Emergency Center, LP with actual intent to hinder, delay or defraud any creditor. Elanie UcBamichael MD invested \$75,000.00 to purchase a 3 percent limited partnership interest in NEC Port Arthur Emergency Center, LP, and the amount invested is value from which NEC Port Arthur Emergency Center, LP benefited, and is more than the amount of all payments and transfers which Elanie UcBamichael MD received from NEC Port Arthur Emergency Center, LP. In addition, Elanie UcBamichael, MD paid its proportionate share of federal income taxes based upon income of NEC Port Arthur Emergency Center, L.P. The Trustee's claims against Elanie UcBamichael MD are barred by 11 U.S.C. Section 548(c) and Section 550(b).

23. The Trustee's claims against Elanie UcBamichael MD under Bankruptcy Code Sections 548 and 550 are barred by the applicable statutes of limitations. The transfers alleged to have been made to Elanie UcBamichael MD allegedly took place more than two years before the date on which the Debtors' petitions were filed, and The Trustee's claims against Elanie UcBamichael MD under Sections 548 and 550 of the Bankruptcy Code are barred by the two year statute of limitations of 11 U.S.C. 548(a)(1).

**Defenses to the Trustee's Claims for Alleged Receipt of Fraudulent Transfers  
Under Texas Business and Commerce Code Section 24.006**

24. Elanie UcBamichael MD did not receive any payments or transfers from any of the debtor entities except for NEC Port Arthur Emergency Center, L.P.

25. Elanie UcBamichael MD did not receive any payments or transfers from NEC Port Arthur Emergency Center, L.P which were made with actual intent to hinder, delay or defraud its creditors. There are no "Badges of Fraud" as set out in Tex. Bus. & Comm. Code Section

24.005(b). No Badges of Fraud are alleged in the Complaint. Elanie UcBamichael MD is not liable to the Trustee under Tex. Bus. & Comm. Code § 24.005.

26. On the dates of the alleged transfers, and at all relevant times, NEC Port Arthur Emergency Center, LP was not insolvent, and did not become insolvent as a result of any payments or transfers to Elanie UcBamichael MD. Elanie UcBamichael MD is not liable to the Trustee under Tex. Bus. & Comm. Code § 24.006(a).

27. Elanie UcBamichael MD gave reasonably equivalent value for any transfers from the Debtors. Elanie UcBamichael MD invested \$75,000.00 to purchase a 3 percent limited partnership interest NEC Port Arthur Emergency Center LP. Elanie UcBamichael MD's this capital contribution is "value" as defined in Tex. Bus. Comm. Code § 24.004(a) and is "reasonably equivalent value" as defined in Tex. Bus. Comm. Code § 24.004(d). Elanie UcBamichael MD invested \$75,000 to purchase its limited partner interest in NEC Port Arthur Emergency Center LP in good faith, and any transfers made by NEC Port Arthur Emergency Center LP to Elanie UcBamichael MD were in good faith for value, from which NEC Port Arthur Emergency Center, LP benefited, and is more than the amount of all payments and transfers which Elanie UcBamichael MD received from NEC Port Arthur Emergency Center, LP. In addition, Elanie UcBamichael, MD paid its proportionate share of federal income taxes based upon income of NEC Port Arthur Emergency Center, L.P. Elanie UcBamichael MD is not liable to the Trustee under Tex. Bus.& Comm. Code § 24.009(a).

28. The Trustee's claims against Elanie UcBamichael MD under Tex. Bus & Comm. Code § 24.006(b) are barred by the statute of limitations. For transfers to an insider which are sought to be avoided under § 24.006 (b), the statute of limitations is one year after the transfer is made. Elanie UcBamichael MD did not receive any payments or transfers from NEC Port

Arthur Emergency Center LP, or any other debtor entity, within one year before the date of the Debtors' petitions and none are alleged to have been made in the Trustee's Complaint.

### **COUNTER CLAIM**

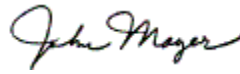
29. The Trustee's claims against Elanie UcBamichael MD are without merit. Elanie UcBamichael MD is entitled to recover its reasonable attorney's fees for defending this Complaint from the Trustee of the Unsecured Creditor Trust of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates, pursuant to Tex. Bus. & Comm. Code § 24.013. A reasonable attorney's fee for Elanie UcBamichael MD for the services of its attorneys is the sum of at least \$30,000.

### **PRAYER**

Wherefore, premises considered, Elanie UcBamichael MD prays that the Trustee take nothing from Elanie UcBamichael MD, and that Elanie UcBamichael MD recover its costs and reasonable attorney's fees from the Plaintiff, the Trustee of the Unsecured Creditor Trust of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates, and for such and further relief to which Elanie UcBamichael MD may show herself to be justly entitled.

Respectfully submitted,

ROSS, BANKS, MAY, CRON & CAVIN, P.C.

By: 

John Mayer

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Attorney for Defendant

Elanie UcBamichael MD




**CERTIFICATE OF SERVICE**

I certify that true copies of this answer were served upon the Trustee by email to the Trustee's attorney of record Clifford Walston of the law firm of Walston Bowlin, LLP, to email address [cliff@walstonbowlin.com](mailto:cliff@walstonbowlin.com), and on all persons who have entered an appearance in this case electronically by means of the Court's CM/ECF System contemporaneously with filing.

I certify that true copies of this motion and proposed order were served upon the Trustee, the Trustee's attorney, and all of the Defendants by mailing same, properly addressed and postage prepaid, to the persons and parties whose names are set forth in the attached Mailing list.

This service was completed on June 30, 2020.

A handwritten signature in black ink, appearing to read "John Mayer", is written above the printed name.

John Mayer

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